



June 18, 1999

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR99-1683

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125249.

The Texas Department of Health (the "department") received an open records request for certain documents pertaining to Laurel Ridge, a Brown School Psychiatric Hospital. You state that some responsive information will be released to the requestor. You seek to withhold certain other information pursuant to section 552.101 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public pursuant to common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Some of the information at issue reveals the identity of patients with emotional disorders and as such must be withheld from the public to protect those individuals' privacy interests. *See* Open Records Decision Nos. 343 (1982), 262 (1980). We agree that the information you have marked must be withheld on privacy grounds.

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<sup>1</sup>We note that although you did not request an open records decision from this office within the required ten business days following the department's receipt of the open records request, the demonstration that information is deemed confidential by law constitutes a "compelling reason" for non-disclosure that overcomes the resulting presumption of openness. *See* Gov't Code § 552.302; Open Records Decision No. 150 (1977).

As noted above section 552.101 also excepts from required public disclosure information made confidential by statutory law. Section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients, makes confidential “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” *See also* Health & Safety Code § 611.001 (defining “patient” and “professional”). Some of the documents at issue either consist of patients’ mental health records or contain information that appears to have been obtained from mental health records and patient-professional communications. Neither may be released except in accordance with sections 611.004 and 611.0045. Health and Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

Similarly, some of the requested records contain medical information that is also made confidential by statutory law. Section 5.08 of article 4495b of Vernon’s Texas Civil Statutes, the Medical Practice Act (the “MPA”), makes confidential “[c]ommunications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient” and “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” The records at issue contain information that appears to have been directly obtained from medical records and communications and such information may be disclosed only in accordance with the MPA. *See* V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records).

We agree that the information you have highlighted may only be released in accordance with section 611.004 and 611.0045 of the Health and Safety Code or the MPA. The remaining information in the records at issue must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/RWP/eaf

Ref.: ID# 125249

Encl. Submitted documents

cc: Ms. Sylvia H. Imhoff  
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(w/o enclosures)